

## **New Staff Guidance on Qualifying OPEB Plan Trusts and Fiduciary Responsibilities**

At its July meeting, the GASB cleared an additional question and answer intended to provide implementation guidance regarding qualifying OPEB plan trusts, and the responsibilities of those who play a significant role in the functions of an OPEB plan that includes such a trust, for purposes of accounting and financial reporting in accordance with the requirements of Statements 43 and 45. This guidance will be published shortly along with other new questions and answers and updates in the Comprehensive Implementation Guide—2006. Because the guidance is of immediate relevance for many governments who are implementing the OPEB standards, it is being posted to the GASB Web site in advance of publication.

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*Q*—For purposes of financial reporting in conformity with the requirements of Statements 43 and 45, what are the functions of an OPEB plan that is administered as a qualifying trust, or equivalent arrangement, and do those Statements specify the manner in which those plan functions should be administered?

*A*—As the term generally is used in Statement 43, an OPEB plan is a trust or other fund through which assets are accumulated and benefits are paid. For an OPEB plan that is administered as a qualifying trust, or equivalent arrangement, additions to the trust, and to plan net assets, generally will include contributions from the employer(s), plan members, and other entities. Also, trust, or plan, assets accumulated in excess of pay-as-you-go requirements generally will be invested, and income from the investment of plan assets will be added to the trust. Deductions from the trust, and from plan net assets, generally will include benefits paid, or currently due and payable, to or on behalf of plan members or their beneficiaries and plan administrative expenses.

Statements 43 and 45 do not specify how an OPEB plan should be structured administratively. That is, those Statements do not prescribe the precise workings of the trust, or equivalent arrangement, or the responsibilities of the trustee(s) in relation to the responsibilities of the employer, employer officials, or other entities or persons that may be involved in administering the preceding financial activities associated with the functions of financing and paying benefits. A variety of plan structures may arise in practice to fit specific circumstances.

Notwithstanding the possibility of individual variations in plan structure, for an OPEB plan to be considered a qualifying trust, or equivalent arrangement, it is essential that the plan structure and the manner in which assets are held, invested, and disbursed should be compatible with holding and managing plan assets, not as assets of the employer, but in trust for the exclusive benefit of plan members and their beneficiaries—and with the specific criteria of irrevocability of contributions, dedication of the plan assets (including income from the investment of plan assets) to paying benefits in accordance with the substantive plan, and legal protection of the plan assets from creditors stated in paragraph 4 of Statement 43. Moreover, for this purpose it is essential that any and all

entities or persons involved in the functions of the OPEB plan carry out their respective fiduciary roles and responsibilities accordingly.

In some cases, all plan functions may be carried out by the personnel of a single administrative entity, subject to the oversight of plan trustees—similar to the manner in which many state and local governmental pension plans are administered. In other cases, more than one entity or person may be significantly involved in carrying out plan functions. For example, the trustees of a particular OPEB plan trust may be principally responsible for holding and investing plan assets, but their responsibility with regard to paying benefits may be limited to disbursing assets at a time, to parties, and in amounts designated by another entity—for example, the health benefits department of the employer—upon receipt of a properly presented request. In the latter circumstance, the following characteristics should be evident for purposes of applying Statements 43 and 45:

- The manner in which payments are disbursed is not inconsistent with the purpose of the trust or with the criteria of irrevocability of contributions, dedicated purpose, and protection of trust assets from creditors, and
- All entities or persons involved in the disbursement and application of plan assets act in a manner consistent with their fiduciary responsibility with regard to their respective involvements.

A payment arrangement or an action by an entity or person involved in accumulating assets or paying benefits that is inconsistent with the purposes of an OPEB plan trust or with the criteria stated in paragraph 4 of Statement 43 (for example, any application of plan assets to a purpose *other than* paying benefits to retirees or their beneficiaries or paying necessary plan administrative expenses) would be evidence that the plan is not being administered as a qualifying trust, or equivalent arrangement. In that event, assets accumulated in excess of pay-as-you-go requirements should not be reported as plan assets, and the employer(s) should not report payments to the fund as OPEB contributions.

In addition, in view of the different potential plan structures, an employer should consider the guidance in paragraph 19 of Statement 14 in regard to potential inclusion of the OPEB plan(s) in which the employer participates as a fiduciary fund(s) in its annual financial report.